



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comark Building Systems, Inc.

File: B-259515

Date: April 10, 1995

Gary P. Quigley, Esq., and Richard L. Larach, Esq., Sidley & Austin, for the protester.

Neil I. Levy, Esq., Kilpatrick & Cody, for American Housing Technologies, Inc., and Thomas E. Mullen, Pegasus Associates, Ltd., interested parties.

David C. Rickard, Esq., Defense Nuclear Agency, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contention that protester's proposal was improperly excluded from the competitive range because the agency conducted a flawed evaluation of proposals is denied where the record shows that the evaluation was conducted in accordance with the stated evaluation criteria and was otherwise reasonable.

2. Protester's claim that exclusion of its proposal from the competitive range was based on an incomplete presentation of the evaluation results to the source selection official is denied where the record shows that the results of the evaluation were provided as an attachment to the competitive range decision memorandum and, as a result, there is no reason to conclude that the decision was based on an incomplete understanding of the evaluation results.

DECISION

Comark Building Systems, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DNA001-94-R-0030, entitled "Russian Defense Industry Transformation into Building Systems," issued by the Defense Nuclear Agency (DNA). Comark argues that its proposal was improperly excluded from the competitive range because its evaluation was unreasonable,

and because the competitive range decision memorandum contains an incomplete presentation of the evaluation results.¹

We deny the protest.

This RFP anticipates award of a cost reimbursement contract in furtherance of the Cooperative Threat Reduction Program between the U.S. government and countries in the former Soviet Union. The solicitation seeks offers from joint ventures between U.S. and Russian companies to transform portions of the state-run weapons industry into a privatized building systems company using American building technology. The successful offeror will also build approximately 500 housing units for retired Soviet military officers.

The RFP identified two areas to be evaluated: area A, technical/management superiority; and area B, the cost proposal. The RFP advised that area A would be scored under eight evaluation factors, listed below in descending order of importance: (1) experience and capabilities; (2) overseas business; (3) leveraged U.S. government resources; (4) Russian participation; (5) initial production run; (6) long-term plans; (7) facility conversion; and (8) training. The RFP also advised that cost would not be scored or weighted, but "may be a significant determining factor for contract award depending on the best mix of technical and cost considerations."

By the June 27, 1994, closing date for receipt of proposals, the agency received 14 offers. On July 14, the source selection evaluation board (SSEB) Chairman prepared a memorandum setting forth the numerical scores awarded each of the offerors. In this memorandum, the SSEB Chairman recommended that the contracting officer create a

¹Comark changed its name from Comark Building Ventures to Comark Building Systems, Inc. in August 1994. The proposal at issue here was submitted as a joint venture under the name of SCCS, a Russian joint stock company. The shareholders of SCCS are Comark Building Ventures; Construction, Marketing and Trading, Inc. (CMT); and the Russian firm Soyuz. Although the joint venture is the interested party to protest DNA's decision, we note that the person who signed the proposal--and is identified therein as the project manager--also signed the protest to our Office, and that DNA's letter excluding the proposal from the competitive range was addressed to Comark. Thus, we will consider Comark's protest here. See H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203. For clarity, the references to Comark in this decision are references to the joint venture.

competitive range of the two highest-rated offers; however, the memorandum also stated that the contracting officer might "consider [Comark] and [Company C] if their cost proposals are sound."

By memorandum dated August 2, the SSEB Chairman forwarded cost evaluations for the four highest-rated proposals, including the proposal submitted by Comark. After considering both the technical and cost evaluations, the contracting officer, by memorandum dated November 18, included only the two highest-rated offers in the competitive range, as recommended by the SSEB Chairman. The following is a listing of each offeror's score, with the dotted line showing the competitive range adopted by the contracting officer:

Company A	83
Company B	82.5

Comark	73
Company C	72.25
Company D	67.5
Company E	66.5
Company F	60
Company G	56
Company H	51.1
Company I	48.5
Company J	13.25
Company K	9.5
Company L	8
Company M	7.5

After completing the evaluation and competitive range determination, the contracting officer notified Comark of its exclusion from further consideration by letter dated November 22. This protest followed.

Comark argues that the decision to exclude its proposal from the competitive range was improper because the agency unreasonably evaluated proposals under the overseas experience and leveraging technical evaluation factors. Specifically, Comark argues that the agency gave unreasonably low scores to Comark's proposal under these two evaluation factors, and gave unreasonably high scores to the two proposals selected for the competitive range. In addition, Comark argues that the competitive range decision was based on an incomplete and unfair presentation of the evaluation results to the contracting officer.

In reviewing an agency decision to exclude an offeror from the competitive range, we look first to the agency's evaluation of proposals to determine whether the evaluation had a reasonable basis. MGM Land Co.; Tony Western, B-241169; B-241169.2, Jan. 17, 1991, 91-1 CPD ¶ 50. To make this assessment, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Thus, we look first to Comark's claim that the evaluation was irrational.

The evaluation factors for overseas experience and leveraging were each assigned a weight of 15 percent of the total available points. Four evaluators scored the proposals under each of the eight evaluation factors, and the scores were averaged to create a consensus score. Under these two factors, the top three offerors were scored as follows:

	<u>Overseas Experience</u>	<u>Leveraging</u>
Company A	14	12.75
Company B	11.75	11
Comark	8.75	7.75

Although we have reviewed Comark's complaint about the evaluation of both of these factors, our decision will address only Comark's contentions about the evaluation of overseas experience. Our conclusion that the evaluation here was reasonable applies to both evaluation factors.

Comark argues that it was unreasonable to award 14 points to Company A under the overseas experience evaluation factor, while awarding only 8.75 points to Comark. In this regard, DNA's evaluation comments state that:

"[d]espite the talent of the companies, almost all lack overseas experience . . . CMT has various projects in Russia. CMT's primary experience appears to be as a consultant, bringing prominent [U.S.] builders and suppliers into the region. They have learned the local supply business."

According to the protester, our Office should conclude that this assessment was unreasonable because, in Comark's view, the agency ignored Comark's experience in the Czech Republic, and misread CMT's experience to conclude that CMT has functioned primarily as a consultant. Comark also argues that the evaluation of Company A and Company B was unreasonable.

As a preliminary matter, we note that Comark did not receive an unfavorable evaluation under the overseas experience factor (or in general); rather, the consensus of the four evaluators was simply that Comark's score should be lower than the scores of the two other offerors. Also, we note that while the evaluation factor is titled "overseas experience," the solicitation does not anticipate an assessment of all overseas experience; rather, the evaluation factor was defined as an assessment of experience in Eastern Europe, "and in particular, the [f]ormer Soviet Union."²

With respect to the overseas experience of Comark's teaming partner, CMT, we have reviewed the attachment appended to Comark's proposal describing CMT's experience. Based on our review, there is nothing unreasonable about the agency's assessment that CMT's experience is primarily as a consultant. The proposal identifies a number of joint ventures between CMT and building companies involving projects in the area, and the proposal materials state that "CMT is a consulting firm to the U.S. construction industry for firms seeking to enter the market in the Russian Federation and elsewhere in the CIS." In fact, in our view, the evaluators' comments about CMT are favorable, and it appears that the presence of CMT in Comark's proposal was viewed as a strength, not a weakness.

With respect to Comark's allegation that the agency ignored its experience in the Czech Republic, we agree that the narrative comments prepared as part of the evaluation do not discuss this issue, but we do not think that the evaluation was unreasonable because the issue was not mentioned. Our review of the proposal shows that Comark does not highlight or detail its claimed experience. Specifically, in the introductory portion of section III, the proposal merely states that "[Comark] has overseas building experience in [nine] countries including the Czech Republic and the last major U.S. housing program in Israel." The proposal does not elaborate on this information but refers the reader to appendix 1 for a more complete discussion of Comark and CMT; however, the appendix 1 description of Comark fails to provide any additional information about the claimed overseas building experience in the Czech Republic. In fact, the only mention of such experience is found in the penultimate sentence of the paragraph identifying Comark's

²Thus, the evaluation conclusion that "almost all" of the companies identified in Comark's proposal lack overseas experience means that the companies lack experience in Eastern Europe and the former Soviet Union, not that they lack experience in any overseas location.

proposed project manager.³ Given the proposal's brevity and lack of detail regarding this issue, we see no basis to conclude that the evaluation narrative was unreasonable for failure to mention the matter.

With respect to Comark's contention that the agency unfairly inflated the scores of the two higher-rated offerors in this area, we similarly conclude that the record does not support Comark's arguments. For example, Comark argues that the agency unreasonably awarded 14 points⁴ to Company A under this factor even though "only one [of Company A's teaming] member[s] has experience in actually building houses in Russia or Eastern Europe--just like Comark." Instead, our review shows that Company A's proposal identifies numerous current housing projects in Russia and dozens of other deals, compared to Comark's mere mention of experience in the Czech Republic. This fact alone shows that Company A is not "just like" Comark, and that the agency could reasonably have awarded more points under this factor to Company A than to Comark. We also note that Comark's similar contention that Company B unreasonably received 11.75 points under this factor while Comark unfairly received 3 fewer points is equally unpersuasive. In short, the record here leads us to conclude that there was nothing unreasonable about the consensus scores awarded during the evaluation of these proposals.

The competitive range is determined by comparing all acceptable proposals and proposals reasonably capable of being made acceptable in a particular procurement. Pyramid Servs., Inc.; Omni Corp., B-257085; B-257085.2, Aug. 23, 1994, 94-2 CPD ¶ 79. Consequently, an acceptable proposal--or a deficient proposal capable of being corrected through discussions--may nonetheless be eliminated by comparing the relative ranking of the other proposals to the proposal in question. See Radio Sys., Inc., B-255080, Jan. 10, 1994, 94-1 CPD ¶ 9; Jack Faucett Assocs., B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310. Here, given the agency's evaluation of Comark's proposal in the areas of overseas experience and leveraging and the relative technical superiority of the two

³Even this reference, in its entirety, states only that the project manager's "recent projects include [t]he Czech Republic, Germany, Spain, Mexico, Israel, England, Japan and Saudi Arabia."

⁴Comark's comments on the agency report claim that the agency awarded Company A 56 points under this factor. Comark makes this claim by disregarding the consensus score awarded here and instead totaling the scores awarded by each evaluator. In fact, the discrepancy between Company A and Comark is approximately 5 points, not 21.

higher-rated proposals, and given the additional fact reflected in the record that Comark's cost proposal was viewed as less favorable to the government, we see no basis to question the agency's conclusion that Comark's proposal did not have a reasonable chance at award. Accordingly, the proposal was properly excluded from the competitive range. See Pyramid Servs., Inc; Omni Corp., supra.

Comark argues that our Office should overturn the competitive range decision on the basis of discrepancies between the detailed evaluation narrative, and the shorter, less detailed competitive range decision memorandum. In Comark's view, a comparison of these documents supports a conclusion that the agency excluded Comark's proposal "based upon a flawed and skewed representation of the respective technical merits" of the three highest-rated offerors. We disagree.

Comark is correct in its assessment that the brief summary of its proposal in the competitive range decision memorandum generally sets forth more of the evaluators' negative assessments of its proposal, and does not include many of the positive assessments. However, Comark's argument also requires an assumption by our Office that the competitive range decision was based only on the decisional memorandum, and not on the underlying evaluation materials. This assumption is not supported by the record.

The record shows that all of the evaluation materials were presented to the contracting officer and to the agency's Acting Director of Acquisition Management, who also approved the competitive range decision memorandum. The decision memorandum on its face states at paragraph 3 that the technical and cost evaluation materials are attached to the memorandum as attachments 1 and 2. In addition, the contracting officer's statement submitted with the agency's report on the protest expressly states that the technical evaluation was provided as an attachment to the decisional memorandum. Finally, we note that two of the four signers of the decision memorandum prepared the more detailed evaluation materials, which were apparently provided to the contracting officer--a third signer of the memorandum--along with a recommendation (dated July 14) that the agency include only the proposals of Companies A and B in the competitive range. Since it is clear that three of the four signers of the memorandum were aware of the results of the detailed evaluation, and the fourth--the Director of Acquisition Management--had the detailed evaluation results

provided as an attachment to the memorandum, we find no basis to conclude that the agency's selection decision was based on any claimed misrepresentation of the evaluation results.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel